

The below described is SIGNED.

Dated: December 20, 2006



JUDITH A. BOULDEN
U.S. Bankruptcy Judge



R. Kimball Mosier (2334)
George B. Hofmann (10005)
Parsons Kinghorn Harris
A Professional Corporation
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Facsimile: (801) 363-4378

Attorneys for R. Kimball Mosier,
Chapter 11 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re

NATIONAL SCHOOL FITNESS
FOUNDATION,

Debtor.

R. KIMBALL MOSIER, Chapter 11
Trustee of National School Fitness
Foundation,

Plaintiff,

-vs-

CALLISTER NEBEKER &
MCCULLOUGH, P.C., and SUMSION &
CRANDALL, P.C.,

Defendants.

Bankruptcy No. 04-28808 JAB

[Chapter 11]

Adv. Pro. No. 05-2535

**STIPULATED FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND JUDGMENT**

Plaintiff R. Kimball Mosier, Chapter 11 Trustee of National School Fitness Foundation (the "Trustee") and defendants Callister Nebeker & McCullough, P.C. ("CN&M") and Sumsion & Crandall, P.C. ("S&C") hereby stipulate and agree to the entry of this Stipulated Findings of Fact and Conclusions of Law and Judgment:

FINDINGS OF FACT¹

1. The Trustee is the duly appointed Chapter 11 Trustee of NSFF's bankruptcy estate. The Trustee was appointed as Chapter 11 Trustee by order dated July 9, 2004.
2. CN&M is a Utah professional corporation, having its principal place of business in Salt Lake City, Utah.
3. S&C is a Utah professional corporation, having its principal place of business in Provo, Utah.
4. On or about April 27, 2004, NSFF entered into a revised engagement letter with S&C (the "S&C Engagement Letter") concerning S&C's continued representation of NSFF. CN&M is not mentioned in the S&C Engagement Letter.
5. In conjunction with the S&C Engagement Letter, NSFF paid a retainer to S&C of approximately \$4 million.

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate, see Fed. R. Bankr. P. 7052.

6. On or about May 6, 2004, S&C transferred \$500,000 from its retainer account to the retainer account of the law firm of McDermott Will & Emery.

7. After the Trustee's appointment, S&C paid the balance in its retainer account, less \$29,600.12 (the "Disputed Funds") to the Trustee.

8. S&C has maintained continuous possession of the Disputed Funds since it received the Disputed Funds from NSFF. CN&M has never had possession of the Disputed Funds.

9. The Disputed Funds are not a certificated security, deposit accounts, electronic chattel paper, investment property, or letter of credit rights.

10. The sole issue raised in this adversary proceeding is whether the Disputed Funds are subject to avoidance by the Trustee pursuant to Bankruptcy Code §§ 544, 547, and 550. No other issues were raised or adjudicated.

CONCLUSIONS OF LAW

1. Pursuant to Utah Code Ann. §§ 70A-9a-312(2)(c) and 70A-9a-313(a), a security interest in the Disputed Funds may only be perfected by possession.

2. Any interest CN&M may claim in the Disputed Funds is unperfected. Under Utah Code Ann. § 70A-9a-317(1)(b)(i), a lien creditor takes priority over an unperfected security interest. Pursuant to Bankruptcy Code § 544(a)(1), the Trustee has the rights and powers of a judicial lien creditor as of June 1, 2004, and may avoid CN&M's unperfected alleged interest in the Disputed Funds.

JUDGMENT

Based on the preceding findings of fact and conclusions of law, it is hereby ordered, adjudged, and decreed as follows:

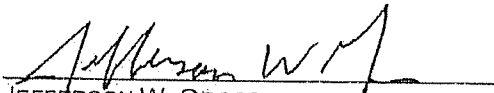
1. S&C is hereby directed to immediately transfer the Disputed Funds, plus any interest which has accumulated on the Disputed Funds, to the Trustee.
2. The above-captioned case is hereby dismissed, with prejudice, the parties to bear their own fees, costs, and expenses.

APPROVED AS TO FORM:

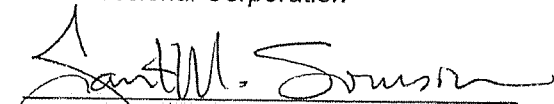
PARSONS KINGHORN HARRIS
A Professional Corporation

/s/ GEORGE B. HOFMANN
R. KIMBALL MOSIER
GEORGE B. HOFMANN
Attorneys for the Plaintiff

BURBIDGE & MITCHELL


JEFFERSON W. GROSS
Attorneys for Defendant CN&M

SUMSION & CRANDALL
A Professional Corporation


GRANT M. SUMSION
Attorneys for Defendant S&C

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2006, I caused to be served a true and correct copy of the foregoing **Stipulated Findings of Fact and Conclusions of Law and Judgment**, as follows:

By U.S. Mail, first-class, postage prepaid to the following:

U.S. Trustees Office
Ken Garff Building
405 South Main St., Suite 300
Salt Lake City, UT 84111

By Electronic Service to the Following:

USTPRegion19.sk.ecf@usdoj.gov

/s/ George B. Hofmann